KOJASA HOLDINGS BHD.

v.

MAHKAMAH PERUSAHAAN MALAYSIA & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J
[ORIGINATING MOTION NO. R2-25-96-93]
5 DECEMBER 1994

INDUSTRIAL LAW*: Dismissal - Claimant, a Sri Lankan citizen, employed by Malaysian company - Work pass not renewed - Claimant posted to Singapore - Claimant paying Singapore tax and contributing to Singapore Provident Fund - Preliminary objection by company - Whether Industrial Court has jurisdicton to hear the dispute.*

ADMINISTRATIVE LAW: *Prohibition - Application by company to prohibit Industrial Court from hearing case on issue of dismissal - Claimant, a Sri Lankan citizen, employed by Malaysian company and posted to Singapore - Whether the Industrial Court has extra territorial jurisdiction -Whether prohibition can be granted without award of Industrial Court being quashed.*

This was an application for an order to prohibit the Industrial Court from proceeding with the hearing of Industrial Court case no. 4/4-223/90, Award no. 177/93.

The 2nd respondent/claimant who was a Sri Lankan citizen was employed by the applicant, a Malaysian company, as a corporate adviser on a three year contract. The claimant was unable to renew his work pass and was posted by the applicant to Singapore where he was to work out the remainder of his contract term for one Euromas Trading Pte. Ltd., a company registered in Singapore. From 1 July 1988, the claimant was employed in Singapore and payed Singapore tax and contributed to the Singapore Provident Fund. By a letter dated 13 January 1989 the claimant was dismissed with effect from 16 January 1989. The claimant filed an action in the Industrial Court contending that the dismissal was without just cause or excuse to which the applicant replied by raising a preliminary objection that the Industrial Court did not have the jurisdiction to hear the matter as the claimant was not a Malaysian citizen. After hearing the objection the Industrial Court disallowed the objection *vide* Award No.177 of 1993.

Counsel for the claimant contended that as the claimant was working for a company within the jurisdiction, the Industrial Court had the jurisdictin to hear a dispute between him and a Malaysian employer. Counsel also contended that the Court could not grant an order of prohibition without first quashing the award of the Industrial Court.

Held:

[1] The Industrial Court has no extra territorial jurisdiction. The claimant was employed in Singapore. Non-citizen employees of Malaysian companies doing business abroad are subject to the laws of the country in which they are employed. They cannot avail themselves to the rights under the Malaysian laws merely because they are employed by a Malaysian company.

[2] An order for prohibition can be granted notwithstanding that the award is not quashed.

[Application allowed with costs]

Cases referred to:
Public Prosecutor v. Rajappan [1986] 1 MLJ 152 ***(refd)***
Mostek Malaysia Sdn. Bhd., Penang v. Cik Aniza Yaacob & 763 Ors. [1986] ILR November 876 ***(foll)***
Cik Aniza Yaacob & 763 Ors. v. Mostek Malaysia Sdn. Bhd. & Ors. [1988] 1 MLJ 451 ***(foll)***
Tomalin v. S. Pearson & Son, Limited [1909] 2 KB 61 ***(refd)***
Inchcape Malaysia Holdings Bhd. v. R.B. Gray & Anor [1985] 2 MLJ 297 ***(refd)***

Legislation referred to:
Employment (Restriction) Act 1968
Industrial Relations Act 1967
Workmen's Compensation Act 1906

For the applicant - N. Sivabalah; M/s. Shearn Delamore & Co.
For the respondent - B. Lobo; M/s. Lobo & Associates

JUDGMENT

Wan Adnan bin Ismail J:

This is an application for an order of prohibition to prohibit the Industrial Court from proceeding with the hearing of the Industrial Court Case No. 4/4-223/90, Award No. 177/93.

By an agreement dated 1 May 1987 the claimant was employed by the company as the corporate adviser of the company for a term of three years with effect 1 May 1987. The claimant is a citizen of Sri Lanka. Clause 16 of the said agreement provides as follows:

> 16. If any work pass is required for the engagement of the officer, this agreement shall be conditional on a work pass being obtained and the work pass remaining valid for the duration of this agreement.

Sabah Immigration Authorities refused to renew the claimant's work pass. Consequently with effect from 1 July 1988 the claimant was posted to Euromas Trading Pte. Ltd. and stationed in Singapore. Euromas Trading Pte. Ltd. is a company registered in Singapore. As from 1 July 1988 the claimant was employed in Singapore and was subject to the laws of Singapore. He paid tax in Singapore and contributed to the Singapore Provident Fund.

The letter posting the claimant to Singapore is as follows:

> Dear Sir,
>
> You are posted to Euromas Trading Pte. Limited, stationed in Singapore with effect from 1 July 1988 for the period of your existing contract with Kojasa Holdings Berhad.
>
> Please note that you will be paid according to your Contract of Service with Kojasa Holdings Berhad. Transportation and housing will be arranged by Euromas Trading Pte Limited.
>
> Yours faithfully,
> Kojasa Holdings Berhad
>
> Sgd.
> Mohd Yussof Nair
> Managing Director

By letter dated 13 January 1989 the claimant was dismissed with effect from 16 January 1989. The letter of dismissal is as follows:

> Mr. S.K. Ganesan
> Euromas Trading Pte. Ltd.
> 480, Holland Road
> SINGAPORE 1027
>
> Ganesan
>
> You have not responded in any way to my suggestion *vide* KHB/PERS/SKG dated 11 November 1988. Neither have you responded at all to my requests (by telephone and face-to-face discussion) for information regarding business deals that you have supposedly been conducting for and on behalf of Kojasa Holdings Berhad. I had asked you to return some files which should be of some assistance to us in responding to some civil suits against us arising from some timber deals committed by you in the past. This you have not done. When I sought after you some time last year I was surprised to know that you have dashed off to India.
>
> From all these, it is evidently clear that you have no intention to maintain a proper working relationship, and I can only deduce that you are merely biding for time and perhaps sitting tight under clause 22.1 of your employment contract. Under these circumstances, I have no alternative but to terminate your service forthwith. This means that your last working day with this company is 16 January 1989.
>
> Please, therefore, return everything which belongs to the company. You may leave them with Mr Ben Kho of Euromas Trading Pte Limited.
>
> Sgd.
> Felex Golingi
> Group Managing Director
>
> cc Mdm Goh Mee Hwa - Acnt

The claimant contends that the dismissal is without just cause or excuse. In their statement of reply the company raised the following preliminary objection:

> Since the claimant is not a citizen of Malaysia nor was he, at all material times, ever employed in Malaysia, this Honourable Court is not seised with jurisdiction to hear this dispute.

The Industrial Court heard the objection and by Award no. 177 of 1993 (Ruling) disallowed the objection. Hence this application.

It is the contention of the learned Counsel for the company that the Industrial Court has no jurisdiction to hear this dispute because the Industrial Relations Act 1967 is territorial in nature and the claimant was employed in Singapore. According to him as the Industrial Relations Act is silent whether or not it is extra territorial in nature it must be assumed that the Industrial Court has no extra territorial jurisdiction. In support of his contention he referred to the case of *Public Prosecutor v. Rajappan* [1986] 1 MLJ 152. In that case Salleh Abbas LP (as he then was) said:

> Every piece of legislation is presumed to have effect only within the territory of the legislature. If effect is intended to extend beyond the territory the enactment to that effect must be clear and beyond dispute.

He also referred to the Industrial Court case of *Mostek Malaysia Sdn. Bhd., Penang v. Cik Aniza Yaacob & 763 Ors.* [1986] ILR November 876, where the Industrial Court held that it had no extra territorial jurisdiction. This finding was confirmed by Mohamed Dzaiddin J (as he then was) when the matter came before him on an application for certiorari to quash the

finding (see *Cik Aniza Yaacob & 763 Ors. v. Mostek Malaysia Sdn. Bhd. & 2 Ors.* [1988] 1 MLJ 451. Another case referred to by the learned Counsel is the English case of *Tomalin v. S. Pearson & Son, Limited* [1909] 2 KB 61. In this case the question was whether the Workmen's Compensation Act 1906 applied to the case of an accident happening abroad. The Court of Appeal held it did not. Cozens-Hardy M.R. said:

> What is the widow's claim here? She is claiming, not as a party to the contract, not as claiming any rights under a contract made by her or by any person through whom she claims, but she is simply claiming the performance by the defendants of a statutory duty, which statutory duty is said to be found in the Workmen's Compensation Act. Now that brings us face to face with this proposition. What is the ambit of the statute and what is the scope of its operation? It seems to me reasonably plain that this is a case to which the presumption which is referred to in Maxwell on the **Interpretation of Statutes** in the passage at p. 213, which has been read by Mr. Waddy, must apply: "In the absence of an intention clearly expressed or to be inferred from its language, or from its language, or from the object or subject-matter or history of the enactment, the presumption is that Parliament does not design its statutes to operate beyond the territorial limits of the United Kingdom.

In the same case Fletcher Moulton LJ said:

> And as this is a statutory right, we are driven to inquire what is the ambit locally of the operation of the statute.
>
> It clearly cannot apply universally all over the world. I have no doubt, for the reasons the Master of the Rolls has given, it applies to the United Kingdom alone. The accident must be one happening in the United Kingdom to a person there who has the status of a workman to some employer who, in some way or another, is made liable to the jurisdiction of this Act. If that had been so, then I think the widow would have had a good claim, but here it is clear the accident did not happen within those local limits, and in my opinion the decision of the County Court Judge cannot be upheld.

I agree that the Industrial Court has no extra territorial jurisdiction.

The next question for me to decide is whether the Industrial Court has jurisdiction to hear a dispute between the claimant who is not a citizen of this country but employed by the company which is a Malaysian company to work in a country outside Malaysia, namely Singapore.

The Employment (Restriction) Act 1968 prohibits the employment of non-citizens in Malaysia unless they have been issued with valid employment permits.

Section 5 of the Act provides as follows:

> 5. (1) (a) No person not being a citizen referred to in the Schedule shall be employed in any business in Malaysia or accept employment in any business in Malaysia unless there has been issued in respect of such person a valid employment permit.
>
> (b) No person shall employ in Malaysia any person not being a citizen referred to in the Schedule unless there has been issued in respect of that latter person a valid employment permit.
>
> (2) Subsection (1) shall have effect notwithstanding any other written law or of any term or condition of any contract or agreement.
>
> (3) For the purposes of this section any person found performing any act normally performed by an employee in any place of employment shall be deemed to have been employed under a contract of service by the employer of that place of employment.

The company could not continue to employ the claimant in Malaysia after his work pass was not renewed. The claimant was posted to Singapore and at the material time he was working in Singapore. He was issued with a work pass by the Singapore Authority. He paid Singapore tax and he contributed to the Singapore Provident Fund. He was thus an employee of the company in Singapore and thus Singapore Laws will be applicable to him.

According to Mr. Lobo the learned Counsel for the claimant, the test whether or not the Industrial Court has jurisdiction should be - for whom was he working? As he was working for a company within jurisdiction, the Industrial Court will have jurisdiction to hear a dispute between him and the Malaysian employer. I cannot agree with him. The claimant was employed in Singapore. Non-citizen employees of Malaysian Companies doing business abroad are subject to the laws of the country in which they are employed. That country's laws will be applicable to them. They cannot avail themselves to the rights under the Malaysian laws merely because they are employed by a Malaysian company.

Another point raised by Mr. Lobo is that this Court cannot grant an order of prohibition without first quashing the award. There is no application for an order of certiorari to quash the award. On this point also I cannot agree with him. An order of prohibition can be granted notwithstanding that the award is not quashed. (See *Inchcape Malaysia Holdings Bhd. v. R.B. Gray & Anor*.) [1985] 2 MLJ 297.

For the above reasons I allowed the application with costs.